

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
(EL PASO DIVISION)**

In re: Case No.: 23-30067-hcm
A&R CHAVIRA, LLC, Chapter 11
Debtor.
_____ /

**WESTLAKE FLOORING SERVICES, LLC’S RESPONSE TO DEBTOR’S MOTION TO
DISMISS CHAPTER 11 CASE PURSUANT TO 11 U.S.C. §1112(b)**

TO THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE:

Westlake Flooring Services, LLC (“Westlake”), a secured creditor in this Chapter 11 case, files this Response to Debtor’s Motion to Dismiss Chapter 11 Case pursuant to 11 U.S.C. § 1112(b) (“Motion”) [DE #60] filed by Debtor A&R Chavira, LLC (“Debtor”), and states:

I. Response To Motion

1. Westlake admits that Debtor filed for relief under Chapter 11 of the Bankruptcy Code on January 24, 2023. Westlake is without knowledge of the remainder of the allegations in this paragraph of the Motion to admit or deny them.

2. Westlake admits the allegations in Paragraph 2 of the Motion.

3. Paragraph 3 contains legal conclusions for which no response is required. Westlake respectfully refers all questions of law to the Court.

4. Westlake admits that the Orders referenced in paragraph 4 of the Motion were entered by the Court but Westlake is without knowledge of the remaining allegations in this paragraph of the Motion.

5. Westlake is without knowledge of information sufficient to admit or deny the allegations in paragraph 5 of the Motion.

6. Westlake denies the allegations in paragraph 6.

7. Westlake objects to the relief sought in paragraph 7.

II. Facts in Opposition to Dismissal

8. Westlake provides the Debtor with floor plan financing for the Debtor's automobile dealership. The financing is evidenced by the Promissory Note and Loan and Security Agreement ("PNLSA") filed with Westlake's Proof of Claim. POC 4.

9. The PNLSA is secured by the Debtor's assets including, but not limited to, the Debtor's motor vehicle inventory. Westlake perfected its lien on the collateral by filing a UCC-1 with the Texas Secretary of State on October 4, 2021, File Number 00210043522938.

10. The PNLSA includes promises, warranties and covenants to protect Westlake's interests in its collateral including a prohibition on selling inventory out of trust or removing the inventory financed by Westlake away from the Debtor's place of business identified in the PNLSA.

11. At the time of Debtor's filing of the petition, Westlake's purchase money inventory consisted of fourteen vehicles. The outstanding balance for the financing of these vehicles has not been satisfied. Upon information and belief and based upon the representations made in the Debtor's Motion to Dismiss, multiple vehicles have been sold out of trust – possibly during the pendency of this bankruptcy proceeding.

III. Argument

12. In order to determine whether to grant a voluntary motion to dismiss, the Court must weigh the prejudices and interests of both creditors and debtors. *In re: Dutka*, 604 B.R. 726, 720 (Bankr. S.D. Tex. 2019). If dismissal will prejudice creditors then it will ordinarily be denied. *Matter of Atlas Supply Corp.*, 857 F.2d. 1061,1063 (5th Cir. 1988) . Delay In satisfying creditors' claims can be sufficient to preclude dismissal. *Id.*

13. This case should not be dismissed unless and until Debtor provides an accounting of all of Westlake's collateral and the proceeds of Westlake's collateral, including whether sale proceeds remain from outstanding buyers.

WHEREFORE, Westlake requests that dismissal of this case be abated until a full accounting of the vehicles financed by Westlake is produced.

Dated: May 1, 2023.

Respectfully Submitted,

/s/ James R. Liebler, II

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2023, the foregoing Certificate of Service was served on all parties receiving notice through CM/ECF, including the parties listed below:

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/s/ James R. Liebler, II

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